

Sir Robert Dashwood, Sir Samuel Dashwood,  
John Pery, and Edward Noel Esq<sup>s</sup> Surviving  
Executors of George Dashwood, in Trust for  
Minors, the younger Children of the said  
George Dashwood.

Appellants.

Sr. John Champante Resp<sup>t</sup>.

Appellants Case.

May 30th. 1674.  
Dashwood's Assignment.

**T**HE said George Dashwood was concerned with the Lord Ranelagh, and others, in an Undertaking for Managing the Revenue in Ireland, from the 25th of Decemb. 1670, to the 26th of Decemb. 1675; and Sir John Champante was appointed by the Undertakers to be their Treasurer, and his Accounts relating to the Undertaking, to the 26th of Decemb. 1673, were Stated, Examined, and duly allowed of.

Mr. Dashwood, by leave of the other Partners, and pursuant to an Agreement reserved in the Articles of Partnership, by Indenture Assigned his Share in the Undertaking, (which was a Twelfth part of the whole,) to Sir James Hayes, (another of the Partners,) and Champante soon after had notice that he had Assigned, and Mr. Dashwood never afterwards intermeddled in the Undertaking, nor lookt upon himself to be further concerned with Champante, or any other Servants, in the Undertaking.

March 1682.

Mr. Dashwood Died, and after his Death Sir John Champante Exhibited his Bill in the Court of Exchequer against the Appellants, and others, and thereby demanded against them 58756 l. and upwards, as due to him for Money pretended to be borrowed, and lent by him, on account of the Undertaking, all or most of it after Mr. Dashwood's Assignment. To which Bill the Appellants Answered, and insisted, That Mr. Dashwood had by the above mentioned Indenture Assigned his said Share in the said Undertaking to Sir James Hayes, and that Champante soon after had Notice, that Mr. Dashwood had Assigned, and that Mr. Dashwood never after that intermeddled in the Undertaking.

The Court of Exchequer refused to give the Appellants, who were only concerned as Executors, time to Examine their Witnesses to prove the said Notice, but declared, that if the Appellants had proved Notice to Champante, that Dashwood had Assigned his Interest in the said Undertaking to Sir James Hayes, they ought to be discharged from the said Champante, as to any thing by him done on account of the said Undertaking, after such Notice. But in regard Notice was not then proved, Decreed the Appellants subject to Answer Champante's whole Account. Against which Decree, the now Appellants Appealed to your Lordships.

April 24th. 1690.

Upon hearing the said Appeal, your Lordships Ordered, that the Barons should proceed to Examine the Appellants Witnesses, as to Mr. Dashwood's Assignment, and Sir John Champante's having Notice thereof, and that the Account should be understood to be an open Account, as to the Appellants.

Proofs of Notice.

Pursuant to the Lords Order, the Appellants Examined their Witnesses in the Exchequer, being the same Persons named to the Court of Exchequer before the first Hearing there, and by one of their Witnesses, Mr. John Hayes, (Brother to, and Agent for, Sir James Hayes in the said Undertaking,) have proved, That soon after Mr. Dashwood's Assignment Sir James Hayes sent him Notice thereof, and he swears positively, that before Michaelmas, 1674, he gave Notice to Champante, that Mr. Dashwood had Assigned his Interest in the said Undertaking, to Sir James Hayes, and that Champante did not at all Object against it, but paid him for the use of Sir James Hayes several Sums of Money, payable to Mr. Dashwood, in respect of his Share so Assigned, due for Midsummer Quarter 1674, and from thence forward, during the Undertaking; and that about June or July 1674, it was publicly Discouraged of at the Undertakers Office in Dublin, that Mr. Dashwood had so Assigned.

And by John Beesley, another of their Witnesses (who was a Clerk in the Undertaking) have moved, that in July, or August 1674, Champante himself told the said Beesley, that Mr. Dashwood had parted with his Interest, in the said Undertaking, to Sir James Hayes; and also, that it was commonly talked of amongst the Clerks of the Undertaking about a Month before.

So that the Appellants have not only proved Notice given to Sr. John Champante, that Mr. Dashwood had assigned, but also that Champante himself took Notice thereof, and paid Money pursuant thereto; and told others, That Mr. Dashwood had assigned to Sr. James Hayes.

Nov. 29. 1690.  
Rehearing.

After examining the said Witnesses the Cause was Re-heard by the Barons; and altho Champante did not bring any Proof to contradict the Notice the Appellants had proved, other than by pretending to prove by a Letter and an Order, (to both which Mr. Dashwood's Hand was Counterfeited,) That Mr. Dashwood acted after the said Assignment, yet Three of the Barons declared their Opinions, That the Notice the Appellants had proved, that Mr. Dashwood had assigned his Share in the said Undertaking to Sr. James Hayes, was not a sufficient Notice, nor would discharge the Appellants from being liable to Champante's whole Account. But however,

Order.

Ordered that a Tryal at Law should be had (before themselves) at the Barr of the Court of Exchequer, upon this Issue, Whether Champante had Notice of an Assignment made 30th May 1674, by the said George Dashwood to the said Sir James Hayes, of the said George Dashwood's Share and Interest in the said Undertaking, or not; and if the Jury found Champante had Notice of the said Assignment they were also to find when he had such Notice.

Against which Order the Appellants have Appealed.

Reasons of Appeal.

- I. For that altho the Appellants have proved by their said Witnesses, that Champante had Notice before Michaelmas 1674, That Mr. Dashwood had assigned his Interest in the said Undertaking to Sr. James Hayes, and that Champante himself took Notice thereof, and not the least Proof is made to the contrary; yet the Court of Exchequer have directed a Tryal at Law, not whether Champante had Notice that George Dashwood had assigned his said Share in the said Undertaking to Sr. James Hayes, but whether Champante had Notice of an Assignment made 30th May 1674, by Mr. Dashwood to Sr. James Hayes. So that the Court have tyed up the Appellants (who are only Executors, and cannot be supposed to have exact Knowledge of what was done in Mr. Dashwood's Affairs in his Life time, above Sixteen Years since) to prove that Champante had Notice of the very Deed of Assignment, made the 30th May 1674.
- II. For that the Court of Exchequer, notwithstanding their Opinions declared in Court, That the Notice proved by the Appellants was not sufficient Notice (and not sufficient Notice is to be esteemed no Notice) have yet directed an Issue at Law to try the same (before themselves.) So that, at least, the Sufficiency of such Notice, which is matter of Law, and not matter of Fact, is left to be try'd by a Jury, contrary to the Law and Practice of the Realm.

Points in which Your Lordships Judgment is prayed.

1. Whether the Appellants have not proved that Sir John Champante had sufficient Notice, That the Testator George Dashwood had Assigned his Share and Interest in the Undertaking to Sir James Hayes.
2. Whether the Testator George Dashwood, from and after the time Sir John Champante had such Notice, ought not to be discharged against Sir John Champante, as to any Credit by him after that given to the rest of the Undertakers.



*Handwritten text, possibly a signature or title, including "Bureau of" and "in of to".*

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